



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of
Michael Popovsky *et al.*
Serial No. 10/696,069
Filed: October 28, 2003
For: Cleansing Pad

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: Group Art Unit 3723
: Examiner Chin
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In the Application of
Michael Popovsky *et al.*
Serial No. 10/562,311
Filed: July 2, 2004
For: Cleansing Pad

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: Group Art Unit 3723
: Examiner Chin
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Declaration of Eric Jungermann Under 37 C.F.R. § 1.132

I, Eric Jungermann, depose and say:

1. This declaration is submitted pursuant to 37 C.F.R. § 1.132 for consideration by the US Patent and Trademark Office in connection with the above-referenced patent applications.

2. I have over fifty years of experience in the personal care industry, having worked at companies including Colgate-Palmolive, Armour Dial, Helene Curtis and Neutrogena. I am a co-inventor on over thirty granted US patents and am a co-inventor on pending US Patent Application Serial No. 10/562,311.

3. In connection with this declaration, I have reviewed the following documents:

- Two patent applications to Popovsky *et al.*, both entitled Cleansing Pad:
 - US Patent Application Publication No. 2005/0000046 (Serial No. 10/696,069);
 - US Patent Application Publication No. 2006/0282966 (Serial No. 10/562,311) a continuation-in-part of Application Serial No. 10/696,069;
- US Patent No. 5,955,417 entitled "Scouring Pad" to Taylor, which is the key patent cited in the Office Actions issued in 10/696,069.

4. For several reasons, the Taylor patent would not be understood by a person having ordinary skill in the art of formulating personal care products as teaching or suggesting a formulation that would be applied to the skin or hair. The Taylor patent describes hard surface cleansing pads containing high levels of synthetic detergents. In contrast, the inventions described in the two applications by Popovsky *et al.* are directed to personal care cleansing pads (*e.g.*, sponges) based on soap formulations.

5. Taylor teaches a waxy solid cleansing composition comprising sodium dodecylbenzene sulfonate in the range of about 10 to about 20 weight percent. Alkylbenzene sulfonates are well-known to be irritating anionic surfactants. In my experience, sulfonates of this type are never used in personal care products.

6. The waxy solid cleansing composition taught by Taylor also requires sodium lauryl sulfate (SLS) in the range of about 5 to about 25 weight percent. It is well-reported in the patent and scientific literature that SLS is a "harsh anionic surfactant" (*see, e.g.*, US Patent No. 5,646,100 at Column 4, lines 14 – 15) and that SLS produces irritation of the skin (*see, e.g.*, S. Marrakchi and H. Maibach, "Sodium lauryl sulfate-induced irritation

in the human face: regional and age-related differences." *Skin Pharmacol. Physiol.* Vol. 19, No. 3 at pp. 177-80 (2006). Dr. Maibach, Professor of Dermatology at the University of California at San Francisco, has published numerous studies on the irritancy of SLS. These publications are listed at www.dermatology.ucsf.edu/faculty/PDF/BiblioHIM.pdf.

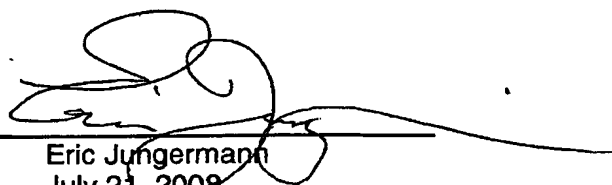
7. The waxy solid cleansing composition taught by Taylor also contains two monoethanolamides as required ingredients – stearic monoethanolamide in the range of about 5 to about 25 weight percent and coconut monoethanolamide in the range of about 20 to about 60 weight percent. Thus, the minimum amount of monoethanolamides in the composition taught by Taylor is 25 weight percent. Based on my experience in formulating personal care products, the typical levels of ethanolamides – more commonly diethanolamides than monoethanolamides – used in personal care products is from about 1% to 5% on a weight basis.

9. Based on the levels of SLS, dodecylbenzene sulfonate and monoethanolamides indicated in the Taylor patent, a person having ordinary skill in formulating personal care products would recognize that the waxy solid composition taught by Taylor is not intended for use on skin or hair. Indeed, there is no reference to skin or hair in the Taylor patent. Instead, a person having ordinary skill in the art would read and understand the Taylor patent as teaching a scouring product to be used on hard surfaces. Throughout the Specification Taylor describes his invention as a "scouring pad." For example, in the fourth paragraph of the Summary of the Invention, Taylor states that one objective of his invention as directed to a cleansing pad that has "a substantial scouring and polishing action but which is suitable for use on delicate and soft surfaces made of such as soft metal (e.g., aluminum, copper), non-stick materials (e.g., Teflon) or fine china."

Application Serial Nos. 10/696,069 and 10/562,311
Declaration of E. Jungermann (July 21, 2008)

Further Declarant says not.

By:


Eric Jungermann

Date:

July 21, 2008